IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 5921 of 2001
with
SPECIAL CIVIL APPLICATION No.5922 of 2001

For Approval and Signature:

HON'BLE MR.JUSTICE R.S.GARG

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1. Whether Reporters of Local Papers may be allowed to see the judgements? : YES

2. To be referred to the Reporter or not? : YES

3. Whether Their Lordships wish to see the fair copy of the judgement? : NO

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO

5. Whether it is to be circulated to the concerned Magistrate/Magistrates,Judge/Judges,Tribunal/Tribunals? : NO

M B PARMAR

Versus

STATE BANK OF INDIA

Appearance:

1. Special Civil Application No. 5921 of 2001
MR SHALIN N MEHTA for Petitioner No. 1-37
MR PRANAV G DESAI for Respondent No. 1

CORAM : HON'BLE MR.JUSTICE R.S.GARG

Date of decision: 19/04/2005

COMMON ORAL JUDGEMENT

Heard the learned counsel for the parties. Thirty seven petitioners in Special Civil Application No.5921 of 2001 and two petitioners in Special Civil Application No.5922 of 2001 are before this Court challenging different orders whereunder they have been reverted from the post of Middle Management Grade Scale II/ III (hereinafter referred to as "MMGS-II/ III") to Junior Management Grade Scale I (hereinafter referred to as "JMGS-I") on their voluntary retirement under the State Bank of India Voluntary Retirement Scheme (SBI VRS), 2000 on the ground that the petitioners have not completed the rural assignment as per the Staff Circular No.17 of 1990 dated 17.02.1990 issued by the respondent Bank in accordance with the guidelines issued by the Government of India.

2. The facts necessary for disposal of the present writ applications are that under Staff Circular No.90 of 2000-01 dated 30.12.2000 Voluntary Retirement Scheme was adopted. The persons opting for Voluntary Retirement were to submit their applications/ fill up form between 15th to 31st January 2001. It is to be noted that on 03.01.2001 Staff Circular No.91 of 2000-01 was issued clearly informing the persons opting for Voluntary Retirement that if an officer, who has not completed mandatory rural/ semi urban assignment (either wholly or partly) submits an application for retirement under SBI VRS, his request would be subject to the provisions contained in Circular No.SC:31 of 1999-2000 dated 29.06.1999. Thus, in case of an officer from this category applying for retirement under SBI VRS before approving his case, his promotion would stand withdrawn. The petitioners who were working in JMGS-I were promoted to the post of MMGS-II/ III in the year 1988 or thereafter. They continued to work and held post for 8 to 12 years. After the scheme of Voluntary Retirement was floated the petitioners were informed about the scheme, they were supplied with a copy of the scheme and the forms and their acknowledgments were taken. The petitioners submitted forms and tendered their resignations. However, their resignations were accepted after they were reverted to JMGS-I. The petitioners say and submit that Staff Circular No.91 of 2000-01 dated 03.01.2001 was never brought to their notice and as such an administrative fraud was played upon them, they were kept in dark, they were duped and the promotion which was given to them in the year 1988 onwards was withdrawn just for nothing and even for no fault of theirs. It is also submitted that the Circular of the Central Government has its own importance, but the petitioners for no fault of theirs if could not be sent to rural service/ semi urban

services, then on the date of their retirement or resignation they could not be reverted back to their original cadre of JMGS-I. It is also submitted that the Bank had submitted before the Supreme Court that the Circular directions issued by the Union of India would be observed by them and the benefit of promotion would be withdrawn if there are lapses on the part of the employee/ officer and not otherwise. It is also submitted that the petitioners made clear allegations that Circular dated 03.01.2001 was never brought to their notice and the respondent Bank is submitting evasive replies. It is also submitted that before coming to this Court in this writ application, certain representations were made, wherein it was brought to the notice of the Bank that if the amended condition was a part of the original Staff Circular No.90 of 2000-01 the petitioners would not have opted voluntary resignation. It is submitted that in absence of service of Staff Circular No.91 of 2000-01 an order adverse to the interest of the petitioners could not be passed.

3. The respondents have filed their detailed affidavit. They have submitted that Circular No.90 of 2000-01 was circulated amongst the petitioners and all other eligible staff and Circular No.91 of 2000-01 was within the knowledge of the petitioners and it was brought to their knowledge. They have submitted that if promotion to the petitioners could not be given because of non completion of rural services/ semi urban services, then the Bank would be absolutely justified in reverting the petitioners on the date of cessation of the relationship of employer and employee. It is also submitted that if the petitioners knew about the amended circular, then they have no reason to come to this Court and make a submission that a fraud has been played upon them.

4. I have heard the parties at length and have perused the papers. It would be necessary and profitable to go to the judgement of the Supreme Court in the matter of State Bank of India & others Vs. Kashinath Kher, reported in (1996) 8 SCC 762. In the said matter State Bank of India had framed two lists. The first list was of the promotees who had completed 2/ 3 years rural services/ semi urban services and could secure promotion. The second list was of those officers who were otherwise senior to the promoted officers, but for none of their faults they could not be sent to rural services or semi urban services. It was observed for the second list that as and when they will complete the required services they would be given promotion and their seniority would be

restored over and above juniors who had been given promotion at an earlier stage. The policy was challenged before the High Court and the matter ultimately went to the Supreme Court. The Supreme Court observed that the State Bank was absolutely justified in making the lists. The Supreme Court also observed that if there were no lapses on the part of the employee/ officer, then they could not be placed in a bad or worse position. The Supreme Court also observed that the policy of giving promotion from back date and restoring seniority would be valid and equitable. The Supreme Court however, observed that completion of rural services/ semi urban services could not be relaxed or be given a go by, because the same tantamounts to a service condition. Supreme Court, however, was of the opinion that if lapses are on the part of the employee, then any promotion given to him may be withdrawn, but if there are no lapses on the part of the employee, he must be given his legal and valid dues. I am referring to the said judgement for the purposes of importance of rural services/ semi urban services, if this was the service condition, then such services are required to be completed, but the question would now be that if promotions are given and no opportunity is provided to an employee within the period of 8-12 years to complete the rural services/ semi urban services or acquire qualifications, then who is to be blamed. In the present matter the respondent Bank does not say that the orders for joining rural services/ semi urban services were issued and the petitioners or any of them ignored the said orders. If the allegations are not of lapses against the petitioners then no fault can be found at the level of the petitioners.

5. The petitioners say that if Circular dated 03.01.2001 bearing No.91 of 2000-01 was brought to their notice right in time before they submitted voluntary resignations, they would never have submitted resignations because amendment was to act contrary to the interest and was to withdraw benefit conferred upon them.

6. Mr.Mehta, learned counsel for the petitioners vehemently submitted that Staff Circular No.90 of 2000-01 was widely circulated and from the letter of the Chief General Manger it would clearly appear that it was displayed on the Notice Board. He submits that this letter along with the scheme and proof of annexures was submitted to the petitioners and after obtaining signatures of the petitioners on the forms an acknowledgment was also taken. According to him Staff Circular No.91 of 2000-01 dated 03.01.2001 was neither displayed on the Notice Board nor there was any order to

display it on the Notice Board, nor it was brought to the notice of the petitioners.

7. Mr.Desai, learned counsel for the respondent submitted that in para 6 and para 21 of their counter affidavit it has been clearly mentioned that Circular No.91 of 2000-01 was brought to the notice of the petitioners and they were aware of it.

8. In para 6 the deponent on the side of the Bank has stated as under:

> "I say that the petitioners were aware about various Staff Circular s issued by the respondent Bank from time to time concerning voluntary retirement scheme."

Thereafter, the deponent has stated that the aspect about withdrawal of promotions was indicated in Staff Circular No.91 of 2000-01 dated 03.01.2001. In para 6 the deponent has nowhere stated that how the petitioners were made aware of Circular dated 03.01.2001.

9. In para 21 the deponent after denying number of allegations made by the petitioners has said that,

> ".. .. I deny that when the petitioners tendered their application for voluntary retirement, they had absolutely no knowledge about the clause (b) of the circular No.91 as alleged. I say that the clarificatory circular no.91 was brought to the knowledge of all concerned including the petitioners. .. .."

10. In what manner the clarificatory circular was brought to the notice of the petitioners and other eligible staff is not shown in the counter affidavit. Nobody has dared to say that it was personally served or it was personally given or it was circulated amongst the staff and their acknowledgment was obtained or it was displayed on the Notice Board. A denial for the sake of denial would not be sufficient, when somebody wants to deny a fact, then the denial may be sufficient but when he wants to assert a fact then positive facts or the evidence which is in his personal knowledge must be brought before the Court. So far as denial is concerned it may have its own impact or effect, but once the respondent wanted to enter the arena of controversy by saying that the circular was brought to the notice of the petitioners then they were obliged to inform the Court that in what particular manner the circular was brought

to the notice of the petitioners. In relation to the facts which are within the personal knowledge of the deponent or which he can gather from his own records an evasive reply would not be sufficient.

11. We must hold that the present is a case where a controversy relating to a particular fact has been raised by either side.

12. In a case like present where right of a group of persons is adversely affected and their assertion that certain benefits are said to be withdrawn without bringing complete facts to their notice, then the authority ought to have considered this aspect of the matter instead of giving a simple reply that nothing can be done in the matter and it has attained finality.

13. It is also to be seen that in some of the representations the petitioners have submitted that in Bengal Circle benefits under retirement scheme have been given to such officers also who did not complete the qualifying services. To that, nobody says anything. The Bank while disposing of the representations made by the petitioners have not made any comment on it. It is also to be seen that the petitioners have said that number of persons had retired earlier or had resigned and in their case fullest benefits have been given to them while the petitioners are being treated with or extended step motherly treatment. For this also the Bank has not said anything in their reply. The question posed before the Court is that if similarly situated persons are treated differently whether the Bank, which is a creation of Statute is committing breach of equity. The equity is not a subject which can be decided in abstract. It is a subject which is to be decided taking into consideration the object of the scheme. If the object of the scheme was to persuade the people to leave services of the Bank, then the object of the scheme so also the fact of withdrawal of benefits should have been widely circulated and ought to have been brought to the notice of all concerned. If the petitioners prove the fact that the amendment was not brought to their notice and they were not made aware of it and it was virtually kept a secret by the Bank authorities, then they would certainly be in a position to prove the case of administrative fraud or a case of non supply of information which was leading to adverse results.

14. Instead of entering into the controversy at the request of Mr.Desai, learned counsel for the respondent we quash the order passed by the Bank and require the

Bank to decide the representation in accordance with law after giving an opportunity of hearing to the petitioners or their representatives. The Bank while deciding the whole matter by a speaking order shall specifically decide the following issues:

(i) Whether Circular dated 03.01.2001 was brought to the notice of the petitioners or the petitioners were informed about the said circular and if yes, in what manner, and if not, whether the petitioners should be allowed to withdraw their resignation?

(ii) Whether in the given circle benefits flowing from the scheme have been extended in favour of those persons, who have not completed the qualifying service and if yes, why the petitioners are being extended step-motherly treatment?

(iii) Whether before coming into force of the scheme any person who submitted his resignation or retired has been given benefit of promotion and the benefits continued in his favour even after his retirement though he did not complete the qualifying services and if yes, whether the benefits should be extended in favour of these petitioners?

15. Both the petitions are disposed of. Rule is made absolute. No order as to costs.

(R.S. Garg, J.)

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